

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**Priscilla Sterling, Raine Becker, Shawn
Miller, and John Bennett, individually and on
behalf of all others similarly situated
Plaintiffs**

v.

Civil No. 3:22-cv-531-KHJ-MTP

**The City of Jackson, Mississippi; Chokwe A.
Lumumba; Tony Yarber; Kishia Powell;
Robert Miller; Jerriot Smash; Siemens
Corporation; Siemens Industry, Inc.; and
Trilogy Engineering Services LLC**

Defendants

**TONY YARBER AND KISHIA POWELL’S MOTION
FOR QUALIFIED IMMUNITY AND TO DISMISS**

Yarber and Powell, through counsel and pursuant to Federal Rule of Civil Procedure 12(c), file this Motion for Qualified Immunity and to Dismiss, seeking dismissal of Counts I and II of Plaintiffs’ Complaint [Doc. 1]. In support of the requested relief, Yarber and Powell state:

1. In the Complaint, Plaintiffs assert three claims for relief against Yarber and Powell: (1) Count I: 42 U.S.C. § 1983 – Fourteenth Amendment Substantive Due Process – Bodily Integrity; (2) Count II: 42 U.S.C. § 1983 – Fourteenth Amendment Substantive Due Process – State Created Danger; and (3) Count III: Negligence. *See id.* at 81-86.
2. Each Count fails to state a claim upon which relief may be granted against Yarber or Powell.
3. Yarber and Powell are entitled to the protection afforded by the qualified-immunity defense.
4. Plaintiffs have not alleged state-actor coercion, and therefore, no violation of bodily integrity.

5. The Fifth Circuit does not recognize a state-created-danger theory of liability.

6. Accordingly, and for the reasons more fully set forth in their accompanying Memorandum in Support, Yarber and Powell request dismissal of Counts I and II against them.

7. In further support of the Motion, Yarber and Powell submit the following exhibits:

- Exhibit “A,” 2011 State-of-the-City Address;
- Exhibit “B,” Mar. 25, 2014 Minutes; and
- Exhibit “C,” Miss. Bd. of Licensure for Prof. Engineers Licensee Details.

RESPECTFULLY SUBMITTED, this the 19th day of May, 2023.

/s/ Terris C. Harris
TERRIS C. HARRIS, J.D., LL.M.

Terris C. Harris, J.D., LL.M. (MSB #99433)
THE COCHRAN FIRM-JACKSON, LLC
197 Charmant Place, Suite 2
Ridgeland, MS 39157
Telephone: (601) 790-7600
tharris@cochranfirm.com
*Counsel for Tony Yarber and
Kishia Powell*

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2023, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which served a copy of the foregoing on all counsel of record.

/s/ Terris C. Harris
TERRIS C. HARRIS, J.D., LL.M.